

### **REMARKS**

The Applicants would like to thank Examiner Vu for the telephone discussion concerning this application. The amendments and remarks presented herein are consistent with that discussion.

The Non-Final Office Action mailed January 5, 2009 considered claims 1, 3-17. Claims 1, 3-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Microsoft Corporation, "Microsoft Windows Management Instrumentation Scripting", (hereinafter MSWMI), further in view of Admitted Prior Art.<sup>1</sup>

By this response, claims 1, 7-9, and 16 are amended such that claims 1-17 remain pending.<sup>2</sup> Claims 1, 7-9, and 16-17 are independent claims which remain at issue. Support for the amendments may be found, inter alia, within Specification pp. 18-19.<sup>3</sup>

As was discussed by telephone, independent claim 1 has been amended to particularly point out that data arises from a source outside the managed code environment. Additionally, a request is received at the runtime engine from [an] executing application for instrumentation data from [the] source executing in a native code environment outside the managed code runtime environment. Further, the runtime engine binds an instance of a management object class to a particular management instrumentation object, the particular management instrumentation object representing the data source executing in the native code environment outside the managed code environment, binds the instance comprising passing a path of an instrumentation data object for accessing the instrumentation data, options used to retrieve the instrumentation data object, and an identification of a parent of the instrumentation data object. As discussed, the Applicants submit that these newly added limitations are distinct from and are not taught or suggested by any cited art.

Because the particular limitations of claim 1 as now presented are not taught or suggested by the cited prior art (considered both separately and in combination). Accordingly, the

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

<sup>2</sup> The amendments and remarks presented herein are consistent with the information presented by telephone by patent attorney Thomas Bonacci (reg. no. 63,368).

<sup>3</sup> However, it should be noted that the present invention and claims as recited take support from the entire Specification. As such, no particular part of the Specification should be considered separately from the entirety of the Specification.

Applicants submit that a rejection under 35 U.S.C. § 103 in view of the cited art would be improper and should be withdrawn. Correspondingly, the Applicants respectfully request favorable reconsideration of claim 1 as now presented (as well as the respective dependent claims).

As claims 7 and 8 incorporate the limitations of claim 1, the distinctions noted above apply also to claims 7 and 8. Accordingly, the Applicants submit that a rejection of claim 7 or 8 under 35 U.S.C. § 103 in view of the cited art would be improper and should be withdrawn. Correspondingly, the Applicants respectfully request favorable reconsideration of claims 7 and 8 as now presented.

Independent claim 9 has also been amended to more particularly point out the object structure of the API used in a particular embodiment of the invention. The Applicants submit that cited art fails to teach or suggest all the limitations of claim 9 as now presented.

In particular, the cited art fails to teach or suggest in response to determining that said instrumentation data was successfully returned, constructing a management object in the runtime environment, the management object being constructed from an API which comprises a management object class, a management object searcher class, a management event watcher class, a management path class, a management scope class, a management exception class, and a management options class.

Because of the noted distinctions, *inter alia*, a rejection of claim 9 under 35 U.S.C. § 103 in view of the cited art would be improper and should be withdrawn. Correspondingly, the Applicants respectfully request favorable reconsideration of claim 9 as now presented (as well as the respective dependent claims).

As claims 16 and 17 incorporate the limitations of claim 9, the distinctions noted above apply also to claims 16 and 17. Accordingly, the Applicants submit that a rejection of claim 16 or 17 under 35 U.S.C. § 103 in view of the cited art would be improper and should be withdrawn. Correspondingly, the Applicants respectfully request favorable reconsideration of claims 16 and 17 as now presented.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending

application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 5<sup>th</sup> day of May, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick D. Nydegger". The signature is stylized with a large, looped "R" and "N".

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